

Decision 03-02-067 February 27, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Fruitridge Vista Water
Company's Petition for Modification of
Resolution No. W-4252 of June 14, 2001.

Application 02-09-040
(Filed September 26, 2002)

OPINION DENYING PETITION TO MODIFY

Summary

This decision denies the Petition of the Fruitridge Vista Water Company (FVWC) to Modify Resolution W-4252 (Petition) because no clarifying language is needed.

In particular, our review of the materials before us¹ shows that Resolution W-4252 found that Robert C. Cook, Sr. is the Financial Manager to FVWC and that in such capacity he also provides legal advice to the utility. The salary that was set for Mr. Cook, Sr. was based in part on the representation that he does provide for some of FVWC's needs for legal advice. Furthermore, our review also shows that there is no record on which the Commission could reach a conclusion concerning the reasonableness of any contract that could subsequently be entered into by FVWC for legal services with Robert C. Cook, Sr. or any other party. Thus, Resolution W-4252, including Appendix E, requires no modification.

¹ These materials consist solely of FVWC's Petition (including Declaration of Robert C. Cook, Sr.) and Resolution W-4252 (including Appendix E).

Background

The Petition specifically asks us to modify the resolution by adding the following language:

The legal experience of a lawyer adds value to his performance as financial manager. However, we find that Robert C. Cook, Sr. is not counsel for FVWC and does not act as an in-house attorney for FVWC in any capacity. Robert C. Cook, Sr. is not employed by FVWC as house counsel to provide professional legal services to FVWC in his capacity as financial officer or in any other capacity, or at all. Moreover, the employment of Robert C. Cook, Sr. does not include any services other than as the financial manager, and does not include any in-house payment or salary for professional legal services to Robert C. Cook, Sr.²

FVWC states that although the current resolution notes that Robert C. Cook, Sr. is a lawyer, it clearly indicates that he is the Financial Manager of FVWC.

As background to the Petition, FVWC explains that it is engaged in complex litigation over MBTE contamination of its wells. FVWC states that Cook, Sr. “undertook to represent Fruitridge in the subject litigation after being unsuccessful in finding a private law firm that would handle the lawsuit.”³

According to FVWC,

[O]n July 24, 2002, in a meeting with Izetta Jackson of the Water Division, Mr. Cook was informed that Water Division considers him to be the house counsel for Fruitridge, based on the ALJ decision as part of Resolution No. W-4252, with his legal services covered as part of the salary for his position of Financial Manager. Mr. Cook

² FVWC, Petition, p. 4.

³ FVWC, Petition, p. 2.

was further informed that Water Division considers his contingent fee contract with Fruitridge to be invalid.⁴

The thrust of FVWC's Petition is that the duties of Cook, Sr. as Financial Manager do not include "attorney service of the kind required to represent Fruitridge in superior court litigation, or of any kind, other than the enhanced value that his legal training brings to his performance as Financial Manager."⁵ FVWC argues that the conclusions of the Water Division, as FVWC understands them, are unfair, and further argues that [t]his matter must be resolved quickly, so that Fruitridge can proceed efficiently with the litigation."⁶

Neither the Water Division nor any other entity filed a response to the Petition.

Discussion

There are very few references in the resolution to the Financial Manager or the duties of that position, and it is possible to repeat every reference:

FVWC currently has one general manager, Robert Cook, Jr. and one financial manager, Robert Cook, Sr. . . .The financial manager is responsible for providing professional business, financial and legal advice to the trustee and general manager. (Res. W-4252, p.2.)

FVWC requests \$190,000 for management salaries in test year 2000. This includes \$85,000 for the Financial Manager (who is also a lawyer), \$90,000 for the General Manager, and \$15,000 as extra compensation to the General Manager for dealing with specific issues relating to the MTBE contamination of FVWC's wells. . . . In

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

addition, FVWC points out that because of the skills of its management team, FVWC uses very few professional services and consequently salaries should reflect this saving. (Res. W-4252, App. E, p. 5.)

Similarly, the \$85,000 salary for the Chief Financial Officer, who also functions as an attorney, appears reasonable in light of FVWC's ability to avoid substantial use of outside professional services. (Res. W-4252, App. E, p. 5.)

There is no other discussion of the Financial Manager or the duties of this office.

From these references to the duties of the Financial Manager, we see that the resolution and the record did not address whether Mr. Cook, Sr.'s services as Financial Manager would include his services as the attorney for FVWC in the complex litigation associated with the MBTE contamination of FVWC's wells. We recognize, however, that the references to "professional services" in the resolution contemplate the enhanced value of his professional legal advice, but did not contemplate the legal services associated with the MBTE litigation. Moreover, the resolution does not rule or provide guidance on the reasonableness of any contract for services pertaining to the complex litigation that arises from MTBE contamination. Indeed, our decisions typically do not provide such guidance. Resolution W-4252 and the ALJ Ruling attached as Appendix E speak for themselves.

Contracts entered into by FVWC for legal representation and litigation costs are subject to reasonableness reviews in general rate case proceedings. Resolution W-4252 does not prejudge the reasonableness of any contract for legal services, nor does it address legal representation in complex litigation within the scope of the duties of this Financial Manager. We see no need to modify

Resolution W-4252 or to depart from our normal procedures for determining the reasonableness of a utility's actions.

Comments on Draft Decision

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § (311)(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by FVWC on January 16, 2003. There were no reply comments.

FVWC asks for clarification of the scope of activities contemplated for Robert Cook, Sr. in his role as Financial Manager. We have incorporated clarifying changes. In addition, FVWC asks for a determination of the ratemaking treatment that we should afford to a contract between Robert Cook, Sr. and FVWC for litigation services. We decline to do so, because the facts pertaining to this contract are not before us at this time.

Findings of Fact

1. Resolution W-4252 treats Robert Cook, Sr. as the Financial Manager of FVWC.
2. Resolution W-4252 recognizes that Mr. Cook, Sr. is an attorney.
3. Resolution W-4252 contemplates that Mr. Cook will provide ordinary professional legal advice in his role as Financial Manager.
4. Neither Resolution W-4252 nor the record in this proceeding address whether Mr. Cook will provide extraordinary professional legal services or complex litigation representation to FVWC in his role as Financial Manager.
5. Resolution W-4252 makes no specific findings concerning the scope of the duties of the Financial Manager of FVWC.

6. Resolution W-4252 makes no findings concerning the prospective reasonableness of any contract entered into by FVWC for representation in litigation arising from MTBE contamination of its wells.

7. Contracts entered into by a utility, including contracts for legal representation and litigation costs, are normally subject to reasonableness review in appropriate proceedings, typically general rate cases.

Conclusions of Law

1. Resolution W-4252 did not find that complex litigation services are included within the scope of Mr. Cook's employment as Financial Manager.

2. The reasonableness of any legal fees paid by FVWC to Mr. Cook, Sr. may be determined in any FVWC rate proceeding where FVWC seeks to recover these costs or in any proceeding where the Commission deems this issue falls within the scope of the proceeding.

3. FVWC's Petition to Modify Resolution 4252 should be denied. The resolution clearly does not treat Mr. Cook, Sr. as providing complex legal services in his position as Financial Manager.

4. To provide prompt guidance to the FVWC, today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Petition of Fruitridge Vista Water Company to Modify Resolution W-4252 is denied.

2. Application 02-09-040 is closed.

This order is effective today.

Dated February 27, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners